
SENATE BILL No. 299

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-37-6; IC 35-41-1-6.3.

Synopsis: Victim confidentiality. Provides that victim advocates and victim services providers may not give testimony, produce records, or disclose certain confidential communications and confidential information without the victim's consent. Provides that a victim may not be forced to consent to the disclosure of confidential information in order to receive counseling or advocacy services. Requires a victim to be notified if confidential information is disclosed.

Effective: July 1, 2008.

Becker, Simpson

January 10, 2008, read first time and referred to Committee on Judiciary.

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Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

SENATE BILL No. 299

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-37-6-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1. **(a)** As used in this
3 chapter, "confidential communication" means any information:

4 (1) exchanged between a victim and a victim ~~counselor~~ **advocate**
5 in private or in the presence of a third party who is necessary to
6 facilitate communication or further the counseling process; and
7 **the course of the relationship between the victim and the**
8 **victim advocate;**

9 (2) **exchanged or** disclosed in ~~the course of the counselor's~~
10 treatment of the victim for any emotional or psychological
11 condition resulting from a covered act; **a support group in which**
12 **a victim is or was a participant; or**

13 (3) exchanged in the presence of a third person who facilitates
14 or facilitated communication between a victim and a victim
15 advocate.

16 **(b) The term includes communication that is verbal or written**
17 **and includes:**



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- (1) advice;
 - (2) notes;
 - (3) reports;
 - (4) statistical data;
 - (5) memoranda;
 - (6) working papers;
 - (7) records; and
 - (8) personally identifying information;
- produced in the course of advocating for a victim.

SECTION 2. IC 35-37-6-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 1.5. (a) As used in this section, "confidential information" includes:

- (1) personally identifying information;
 - (2) descriptions of physical appearance;
 - (3) the case file; and
 - (4) the case history;
- of a person who seeks, receives, or has received services from a victim advocate.

(b) The term does not include:

- (1) information disclosed to a victim service provider or a victim advocate if the victim:
 - (A) files criminal charges; or
 - (B) institutes a civil lawsuit;
 against the victim service provider or victim advocate; and
- (2) alleged child abuse or neglect that is required to be reported under IC 31-33.

SECTION 3. IC 35-37-6-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2.5. (a) As used in this chapter, "personally identifying information" means information that identifies a victim or the location where domestic violence, dating violence, sexual assault, or stalking occurred, including the victim's:

- (1) name;
- (2) mailing and physical address;
- (3) electronic mail address;
- (4) Internet protocol address;
- (5) telephone numbers, including facsimile numbers;
- (6) Social Security number;
- (7) date of birth;
- (8) racial or ethnic background; and
- (9) religious affiliation.

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(b) The term includes any other information that, in combination with other nonpersonally identifying information, would identify an individual.

SECTION 4. IC 35-37-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3. As used in this chapter, "victim" means an individual:

- (1) against whom ~~a covered act~~ **an act of domestic violence, dating violence, sexual assault, or stalking** is committed; or
- (2) other than an individual who is accused of committing ~~a covered act~~, **an act of domestic violence, dating violence, sexual assault, or stalking** who is the parent, stepparent, child, stepchild, grandparent, grandchild, sibling, aunt, uncle, niece, or nephew of the individual described in subdivision (1); **a family member other than a family member who is accused of committing an act of domestic violence, dating violence, sexual assault, or stalking.**

SECTION 5. IC 35-37-6-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 3.5. (a) As used in this chapter, "victim advocate" means an individual employed, appointed, or who volunteers for a victim services provider.

(b) The term does not include:

- (1) a law enforcement officer;
- (2) an employee or agent of a law enforcement officer;
- (3) a prosecuting attorney; or
- (4) an employee or agent of a prosecuting attorney's office.

(c) The term includes an employee, an appointee, or a volunteer of a:

- (1) victim services provider;
- (2) domestic violence program;
- (3) sexual assault program;
- (4) rape crisis center;
- (5) battered women's shelter;
- (6) transitional housing program for victims of domestic violence; or
- (7) program, that as one (1) of its primary purposes is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking.

(d) The term may apply to an individual who does not maintain an office or does not meet with a victim in person.

SECTION 6. IC 35-37-6-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. As used in this

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chapter, "victim ~~counseling center~~ **service provider**" means:

- (1) a public agency;
- (2) a unit of a public agency; or
- (3) an organization that is exempt from federal income taxation under Section 501 of the Internal Revenue Code;

that is not affiliated with a law enforcement agency, and has, as one (1) of its primary purposes, ~~the treatment of~~ **to provide services to** victims for emotional and psychological conditions that occur as a result of ~~covered acts.~~ **domestic violence, dating violence, sexual assault, or stalking.**

SECTION 7. IC 35-37-6-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 8. This chapter does not relieve a victim ~~counselor~~ **advocate** of any duty to report suspected abuse, neglect, battery, or exploitation under IC 12-10-3, IC 31-33, or IC 35-46-1-13.

SECTION 8. IC 35-37-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) The following persons **or entities** may not be compelled to give testimony, ~~or~~ to produce records, **or to disclose any information** concerning confidential communications **and confidential information to anyone** ~~or~~ in any judicial, legislative, or administrative proceeding:

- (1) A victim.
- (2) A victim ~~counselor~~, **advocate** unless the victim **specifically** consents to the disclosure **in a written authorization that contains the date the consent expires.**
- (3) An unemancipated child less than eighteen (18) years of age or an incapacitated victim, unless a custodial parent, custodian, guardian, or guardian ad litem who is not accused of ~~a covered act~~ **committing domestic violence, dating violence, sexual assault, or stalking specifically** consents to the disclosure **in a written authorization that contains the date the consent expires.**
- (4) A victim **service provider, unless the victim specifically** consents to the disclosure **in a written authorization that contains the date the consent expires.**

(b) A victim ~~counselor~~ **advocate** ~~or a victim~~ may not be compelled to provide testimony in any judicial, legislative, or administrative proceeding that would identify the name, address, location, or telephone number of any facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

(c) **A victim service provider or victim advocate may not require a victim to consent to the disclosure of information concerning**

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confidential communications and confidential information as a condition of the victim receiving services.

SECTION 9. IC 35-37-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 11. A victim ~~counselor~~ **advocate** may not waive the protections afforded to a victim under this chapter. However, if:

(1) a victim brings suit against a victim ~~counselor~~, **advocate** or victim ~~counseling center service provider~~ in which the victim ~~counselor~~ **advocate** was employed or served as a volunteer at the time of the counseling relationship; and

(2) the suit alleges malpractice during the ~~counseling~~ relationship; the victim ~~counselor~~ **advocate** may testify or produce records regarding confidential communications with the victim and is not liable for doing so.

SECTION 10. IC 35-37-6-13 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 13. (a) A victim may authorize a victim advocate or victim service provider to release confidential information or other information by signing a written authorization that specifies what information will be released and to whom the information will be released.

(b) The authorization described in subsection (a) must include a date the authorization expires.

(c) A victim advocate shall make reasonable attempts to notify a victim when a victim service provider or victim advocate is required to disclose confidential information or confidential communications.

SECTION 11. IC 35-37-6-14 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 14. A victim does not waive any privileges or confidentiality protections under this chapter if the victim:

(1) testifies about underlying acts of domestic violence, dating violence, sexual assault, or stalking; or

(2) reveals that he or she used or attempted to use the services of a victim service provider or victim advocate.

SECTION 12. IC 35-37-6-15 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 15. The partial disclosure of a confidential communication under this chapter does not waive any privilege concerning the remainder of the confidential communication.

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SECTION 13. IC 35-37-6-16 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 16. The fact that a victim or victim advocate refuses to testify or disclose information because of a privilege under this chapter does not raise any negative inferences or presumptions.**

SECTION 14. IC 35-37-6-17 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 17. A victim service provider may disclose information in the aggregate that does not identify a victim regarding services and demographic information to comply with federal or state data collection requirements.**

SECTION 15. IC 35-41-1-6.3, AS AMENDED BY P.L.118-2007, SECTION 33, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 6.3. "Crime of domestic violence," for purposes of IC 5-2-6.1 and IC 35-47-4-7, means an offense or the attempt to commit an offense that:

- (1) has as an element the:
 - (A) use of physical force; or
 - (B) threatened use of a deadly weapon; and
- (2) is committed against a:
 - (A) current or former spouse, parent, or guardian of the defendant;
 - (B) person with whom the defendant shared a child in common;
 - (C) person who was cohabiting with or had cohabited with the defendant as a spouse, parent, or guardian; ~~or~~
 - (D) person who was or had been similarly situated to a spouse, parent, or guardian of the defendant; **or**
 - (E) **person who is or was dating the defendant.**

SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2008]: IC 35-37-6-2; IC 35-37-6-4; IC 35-37-6-6.

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